IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 12910 OF 2004

DATE OF DECISION: November 14, 2006

Parties Name

Surinder Kumar Chawla

..PETITIONER

VERSUS

Haryana State Industrial Development Corporation and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE PRITAM PAL

PRESENT: Mr. I.S. Ratta,
Advocate, for the petitioner.

Mr. Vikram Aggarwal, Advocate,
for respondents No. 1 and 3.

JASBIR SINGH, J. (oral)

Order.

This writ petition has been filed with a prayer to issue direction to the respondent – Corporation not to initiate any proceedings against the petitioner under Section 3(1)(b) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 (in short the 1979 Act). When this writ petition was filed, the respondent – Corporation with a view to realise the defaulted amount, sold away one property of the principal debtor and the process to sell the main unit was under process.

The petitioner is a guarantor. By placing reliance upon Section 4 of the 1979 Act, counsel states that action against the guarantor can be initiated only after selling mortgaged property of the principal borrower. To support his contention, he has placed reliance upon judgment of the Supreme Court in Pawan Kumar Jain vs. Pradeshiya Industrial and

Investment Corporation, 2004 (2) I.S.J. (Banking) 427. It is an admitted fact that now, during pendency of this writ petition, the mortgaged property, i.e., the main unit owned by the principal borrower had been sold away and as per information supplied, the said property was sold for an amount of Rs. 1,89,00,000/- Another property has been sold for an amount of Rs. 87,00,000/-. In view of sale of the properties, referred to above, definitely liability has decreased, than the amount, as was shown in the recovery certificate.

When confronted with above mentioned situation, counsel for the respondent has failed to say anything to the contrary. In view of the provisions of Section 4 of the 1979 Act and the judgment, referred to above, this writ petition is allowed and recovery certificate is set aside. However, liberty is granted to the respondent No. 1 – Corporation to proceed afresh against the petitioner. It is made clear that the bar of limitation shall not operate against respondent No. 1.

(Jasbir Singh)
Judge

(Pritam Pal)
Judge

November 14, 2006.
DKC